

**Letter of Findings: 04-20200326
Gross Retail Tax
For the Years 2016 through 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department found that Indiana Recreational Vehicle business was required to collect and remit gross retail tax on sales of recreational vehicles to its customer because Recreational Vehicle Business was not entitled to rely on the "casual sales" exemption.

ISSUE

I. Gross Retail Tax - Recreational Vehicle Sales.

Authority: IC § 6-2.5-1-2(a); IC § 6-2.5-2-1; IC § 6-2.5-4-1(b); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 28S (April 2012).

Taxpayer disagrees with the Department's decision assessing it gross retail tax on the sales of ten recreational vehicles.

STATEMENT OF FACTS

Taxpayer is an Indiana business, organized as an S Corporation, which rents and sells recreational vehicles ("RVs"). The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns.

As noted in the resulting audit report, Taxpayer "predominately rents recreational vehicles." In doing, so Taxpayer routinely collects and remits sales tax on the amounts charged to rent one of Taxpayer's RVs.

However, after reviewing Taxpayer's records, the Department also found that Taxpayer was occasionally selling RVs to customers who took possession of those vehicles at Taxpayer's business location. Some of the customers were Indiana residents and some were residents of other states.

When questioned about the RV sales, Taxpayer explained that it was unable to produce original invoices documenting the sales. However, admitted that it "did not collect nor remit sales tax on these [sales] transactions to the [D]epartment." Taxpayer explained that it believed it was engaging in exempt "casual sales" because it was primarily in the business of renting RVs. Therefore, Taxpayer did not believe it was required to collect or remit these tax amounts.

The Department's audit disagreed with Taxpayer but permitted Taxpayer time in which to obtain exemption forms from its customers or evidence that the tax had been paid. Taxpayer was unable to provide this information.

For varying reasons, the audit assessed Taxpayer additional sales tax including sales tax on the sale of the RVs.

Taxpayer disagreed with that portion of the assessment imposing tax on sales of RVs to its customers. Taxpayer submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Recreational Vehicle Sales.**DISCUSSION**

The issue is whether Taxpayer has established that it was not required to collect sales tax on its sales of RVs.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.* Therefore, a retail merchant has a duty to collect and remit sales tax on its sales of tangible personal property. When a retail merchant fails to collect and hold the taxes in trust for the state, the retail merchant is personally liable for the sales tax, interest, and penalties due to the state for those sales.

Indiana does not require entities engaging in "casual sales" to collect sales tax. The Department's regulation, [45 IAC 2.2-1-1](#)(d) explains:

The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

The Department also recognizes certain special circumstances when a motor vehicle dealer sells an RV to out-of-state customers. *See generally* Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA. However, there is no evidence that Taxpayer charged an out-of-state customer Indiana sales tax calculated at that customer's own home state's sales tax rate or that any of the customers provided Taxpayer an ST-137RV "Affidavit of Exemption by a Nonresident of Indiana on the Purchase of a Recreational Vehicle or Cargo Trailer."

As with any other assessment, the assessment of the sales tax constitutes evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

In this case, the Department is unable to agree that Taxpayer has met its burden of establishing that it was not required to collect tax on the sale of the recreational vehicles. The Department bears in mind that "tax exemptions are strictly construed in favor of taxation and against the exemption" *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988) and finds that Taxpayer is not entitled to rely on the "casual sale" exemption. Although the Department has no quarrel with Taxpayer's statement it is primarily in the business of *renting* RVs, the sale of the ten RVs was not "isolated or occasional." "Isolated" or not, the casual sales exemption clearly excludes "motor vehicles" from the provision.

Taxpayer is a "retail merchant" charged with collecting sales tax owed by its customers and holding those amounts as an agent for the state. It failed to do so and now remains responsible for those trust tax amounts.

FINDING

Taxpayer's protest is respectfully denied.

September 3, 2020

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